



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

BJG  
Docket No: 8166-98  
13 May 1999

CAPT [REDACTED] USMC

Dear Captain [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10, United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 13 May 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB), dated 18 November 1998, and the advisory opinion from the HQMC Officer Career Counseling and Evaluation Section, Officer Assignment Branch, Personnel Management Division (MMOA-4), dated 14 April 1999, copies of which are attached. They also considered your letters dated 13 November 1998 with enclosure, 26 November 1998 with enclosure, 30 March 1999, and 7 May 1999 with enclosure.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB in finding that your contested fitness report should stand. The statement from the retired Marine Corps master sergeant provided with your letter of 7 May 1999 did not persuade them that your fitness report at issue was erroneous or unjust. Since the Board found no defect in your performance record, they had no basis to strike your failures by the Fiscal Year 1999 and 2000 Major Selection Boards. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and

material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosures

8166-98



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:  
1610  
MMER/PERB  
NOV 18 1998

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF  
CAPTAIN [REDACTED], [REDACTED] USMC

Ref: (a) Captain [REDACTED] DD Form 149 of 3 Sep 98  
(b) MCO P1610.7C w/Ch 1-6

1. Per MCO 1610.11B, the Performance Evaluation Review Board, with three members present, met on 13 November 1998 to consider Captain [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 931101 to 940323 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report fails to accurately reflect his performance during the stated period and specifically challenges the marks in Items 13a (regular duties), 13c (administrative duties), 14m (economy of management), 14n (growth potential), and 15a/b (general value/distribution). To support his appeal, the petitioner furnishes his own statement, copies of recruiting statistics from November 1993 through March 1994, and letter verifying a recruiting award.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. The report, although less than what the petitioner may have desired, is a positive account of successful accomplishment. He signed Item 22 over four years ago and attested to seeing the completed grades in Section B and comments in Section C.

b. Major Penczak had been the petitioner's Reporting Senior for the prior four-month report, and was obviously familiar with the petitioner's overall performance.

c. Notwithstanding the documentation appended with reference (a), there is absolutely no substantive evidence to support the petitioner's claim that the report is inaccurate. The awarding of the "District RS of the Quarter" to Recruiting Station, New York, was for the collective effort of everyone involved. Nothing shows that the petitioner was singled out as the main

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF  
CAPTAIN [REDACTED] USMC

contributor that would have warranted anything other than as contained in the challenged report.

d. The petitioner does not prove or corroborate that Major [REDACTED] somehow mislead him as to how he was performing or did not honestly counsel him on his performance.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of [REDACTED] official military record.

5. The case is forwarded for final action.

[REDACTED]

Colonel, U.S. Marine Corps  
Deputy Director  
Personnel Management Division  
Manpower and Reserve Affairs  
Department  
By direction of the Commandant  
of the Marine Corps



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

8166-98

IN REPLY REFER TO:

1600  
MMOA-4  
14 Apr 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: BCNR PETITION FOR CAPTAIN [REDACTED]  
[REDACTED] USMC

Ref: (a) MMER Request for Advisory Opinion in the case of  
Captain [REDACTED]  
USMC of 8 Apr 99

1. Recommend disapproval of Captain [REDACTED] request for removal of his failures of selection.
2. Per the reference, we reviewed Captain [REDACTED] Record and his petition. Captain [REDACTED] failed selection on the FY99 and FY00 Major Selection Boards. Subsequently, he unsuccessfully petitioned for removal of the fitness report for the period of 931101 to 940323 from his record.
3. In our opinion, the contested report represented competitive jeopardy to the record as it appeared before the Boards. However, its removal would not significantly improve the competitiveness of the record. The record still contains an abundance of less competitive Section B marks and lower pack overall Value and Distribution marks.
4. In summary, we believe the petitioned report represented competitive jeopardy to the record. Even with the petitioned report removed, we believe enough competitive jeopardy remains to undermine Captain [REDACTED] competitiveness for promotion to major.

[REDACTED]  
Major, U. S. Marine Corps  
Head, Officer Career Counseling and  
Evaluation Section  
Officer Assignment Branch  
Personnel Management Division